IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.46 OF 2003
IN
SUMMARY SUIT NO. 3803 OF 2001

Bank of India ...Plaintiff

v/s

Mr. Dinkar Bhamidipati ...Defendant.

Mr. O.A. Das for the plaintiff.

Mr. Vipul Shukla for the defendant.

CORAM: V.M. KANADE, J.

DATE : 11th August, 2004.

P.C.

1. The plaintiff - Bank of India has filed a Summary Suit against the defendants for non-payment of the Credit Card dues which were due and outstanding. Plaintiff's case is that the defendant availed Credit Card facility. However, he did not pay the outstanding bills. Defendant merely in his correspondence requested waiver of interest. It was submitted by the learned counsel appearing on behalf of the plaintiff that Summary Suit was maintainable towards the payment of dues which were outstanding towards Credit Card bills. He relied upon number of judgments of this Court as also other High Courts in support of his submission. Though the defendant was served and the vakalatnama was filed on his behalf by

advocate Mr. Vipul Shukla, neither the defendant nor his advocate appeared to contest the Summons for Judgment, though the defendant had filed affidavit-in-reply to the Summons for Judgment. In the affidavit-in-reply, it was contended that the suit was not maintainable as a Summary Suit and that there was delay in filing the Summons for Judgment as it was not taken out within six months from the date of filing of the suit and, therefore, the Summons for Judgment was liable to be dismissed on the ground of limitation. It was further alleged that the plaintiff had failed to submit the bills in spite of several requests being made by the defendant. Defendant further stated that he had used the Credit Card but he denied the correctness of the alleged mutual and current account. It was further stated that the first date of use of the card was 3/12/1996 and the last transaction was dated 16/10/1998. It was stated that the suit was based on the accounts and not on the basis of any negotiable instrument or written contract. He submitted that the suit itself was barred by limitation.

2. So far as the maintainability of the suit based on the Credit Card is concerned, it is now held by this court in the case of **Central Bank of India vs.**

Manipur Vasant Kini, reported in 1999 Vol.101(3) Bom.L.R 358. it has been held that the Summary Suit is maintainable on the basis of the contract being entered into between the Credit Card holder and the Bank which issued the Credit Card. In para 7 of the said judgment, the learned single judge held thus:-

> "7 .....
> To maintain a suit as a Summary Suit it must be based on a Negotiable Instrument and/or it must be to recover debt or liquidated money payable by the defendant arising on a written contract or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt. As set out earlier the holder of a card when he uses the card agrees to comply with the conditions and terms when he appends his signature to the application. In most of the cases he agrees to make payments. In the event there are disputes he has to raise such dispute as is contemplated by the provision for settling dispute under the terms and conditions. In some cases such conditions may not exist. The question, however, is whether this would constitute a contract in writing between the

> plaintiff and the defendant. To my mind it is clear that there is a contract in writing in existence between the Bank and the holder of Credit Card by which he agrees to pay the amounts in respect of the use of the card for which he has signed the voucher. In the first instance by applying for a card and signing the form he agrees to abide by the terms and conditions for the use of a card. Secondly, when he signs the slip at the seller he acknowledges the amounts due and payable. Thirdly, by using the card he does not pay the seller but in terms of the accepted conditions whilst applying for the card agrees to pay the said amount to the Bank with other charges which may be levied."

Thus it has been held that on the holder of the Card using and signing the voucher/slip of the sellers' establishment, the amount in the said voucher is an ascertained liquidated amount which is due and payable. Further, under the terms and conditions governing the use of the Credit Card, the Card holder has agreed to pay the amount on the use of the Card. So far as the contention of the defendant in his reply is concerned that the bill was not received by him

also cannot be accepted as while signing the voucher of the seller's establishment, he is aware of the amount mentioned in the said voucher, even assuming that the monthly bill was not received by him. So far as the question of limitation is concerned, it is an admitted position that the defendant had agreed to pay the principal amount but there was some dispute regarding the interest. Immediately, thereafter, Summons for Judgment was filed. Delay in taking out the Summons for Judgment has been condoned by this Court. Thus the defence raised by the defendant is false and vexatious.

3. Summons for Judgment is, therefore, allowed. Defendant is directed to pay to the plaintiffs the amount of Rs 1,26,119.00 together with interest on the principal amount of Rs 40,791.00 at the rate of 18% per annum from the date of filing of the suit till payment of the amount due.

4. Summons for Judgment is accordingly disposed of in the above terms.

V.M. KANADE, J.